

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 990 OF 2017**

Chandan Rajnarayan Prajapati

..Applicant

Vs.

The State of Maharashtra & Anr

..Respondents

Mr. K. H. Giri I/b Mr. Yogendra Giri and Ms Geeta Tripathi for the Applicant

Mr. K. V. Saste Addl PP for the Respondent State

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 3rd AUGUST, 2018**

P.C.

1 At the outset, the Learned Counsel for the Applicant seeks leave to amend prayer clause (a) in the above Application so as to incorporate a challenge to the charge sheet. Leave granted. Amendment to be carried out forthwith.

2 The above Criminal Application has been filed for quashing of the charge sheet being CC No.130/MI/2018 pending on the file of the Learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai. The said case is arising out of the FIR No.34 of 2011 which has been registered with the Vakola Police Station on 27-1-2011 for the offence punishable under Section 292 of the IPC and Section 63B and 64 of the Copy Rights Act. The first informant is one Yogesh Jagdale who is the Regional Officer of one Perfect Anti Piracy Force

who has agreements with different software companies to protect their copyright, one such software company is Akruti Shree Lipi. The FIR which was registered was as a result of raid carried out on the premises of one M/s Outdoor Advertising Professionals Pvt Ltd., with which the Applicant abovenamed is concerned, which raid was carried out by the Respondent No.1 at the behest of the Respondent No.2 i.e. the representative of the said Perfect Anti Piracy Force. It was alleged that in the said raid it was found that the said M/s Outdoor Advertising Professionals Pvt Ltd was using the computer software of the said Akruti Shree Lipi without having licence of any kind and it was further alleged that there was certain illegal sexual content in so far as the said software was concerned.

3 In so far as whether the FIR could be registered at the behest of the agent of a company which FIR alleges violation of the copy right are concerned, the said issue is no more resintegra and is covered by the decisions of the Division Bench of this Court in Criminal Application No.198 of 2016 in the matter of Bharat Vasantlal Mewawala & Anr Vs. The State of Maharashtra & Ors dated 30-8-2016 and in Writ Petition No.1920 of 2015 in the matter of Nirav Danishkumar Shah Vs. State of Maharashtra & Anr dated 9-2-2018. In so far as judgment in Bharat Mewawala's case is concerned, in the said case also the FIR was lodged by a representative of the Perfect Anti Piracy Force. In the said context paragraphs 13, 14, 15 and 17 of the said Judgment are material and are reproduced hereinunder:

13 In short 2nd Respondent is carrying on business of setting criminal law in motion on behalf of his principals and is doing "Liason" with the Police. All this is being done by the 2nd Respondent for consideration. The second respondent gets consideration only when the alleged offender is brought on negotiation table with the company claiming to have a copyright.

14 The statement on the basis of which First Information Report was registered shows that along with the police officer even the 2nd Respondent entered the premises of the Applicants for the purposes of carrying out search. This, the 2nd Respondent with the help of the police machinery got entry into the private premises of the Applicants where the applicants were carrying on business

15 We cannot refrain ourself from observing that the police machinery is being allowed to be manipulated by such person who is openly carrying on business of doing liason work with the police. Notwithstanding various orders passed by this Court, it appears that the Commissioner of Police of Mumbai has not taken these aspects very seriously. A Common man who goes to the police station for lodging the first information report receives a very cold response. He has to either approach this Court in many cases as the police do not register the first information report or take recourse of Sub-section 3 of Section 156 of the Cr.P.C. In the present case, the 2nd Respondent who acted as an agent of the 3rd Respondent could directly approach the Additional Commissioner of Police and get an order of the Additional Commissioner of Police directing Gavdevi Police Station to act upon the complaint. According to us, all this calls for an inquiry by the Director General of Police. Section 420 of IPC was invoked for obvious reasons.

17 We must clarify here that we are not even suggesting that the offences punishable under the said Act of 1957 should not be taken seriously by the police machinery. We are concerned with the manner in which the police authorities right from the Additional

Commissioner of Police, South Zone, have acted. We are more concerned with the fact that someone is carrying on business of registering First Information Reports and doing liason work with the police. The question is whether higher authorities of the police will allow the police to deal with someone who is openly carrying on business of doing liason with police Department. This is the aspect which will have to be considered by the Director General of Police.

4 The view taken in Nirav Shah's case follows the view taken in Bharat Mewawala's case and it is therefore not necessary to repeat what has been held in the said case of Nirav Shah. Applying the ratio laid down in the Judgment of the Division Bench in Bharat Mewawala's case, the same in our view applies on all fours to the facts of the present case.

5 It is also required to be noted that the offences under Section 63B and 64 are punishable with imprisonment of 3 years. In the instant case the offence has been registered on 27-1-2011 as the incident has allegedly taken place on the said day. The charge sheet has been filed only on 3-4-2018 i.e. good 7 years after the registration of the FIR. The reason given by the Learned Addl PP for the delay in filing the charge sheet is that the Investigating Officer who has investigated in the offence was transfer and that he has prepared the charge sheet but the same remain in the confines of the police station and could only be filed on 3-4-2018. In our view that is a faint attempt made to justify the filing of the charge sheet at the said point of time. In our view, the

instant case would also be covered by Section 468 of the CrPC which provides that no cognizance can be taken after three years if the offence is punishable with imprisonment exceeding one year but not exceeding three years. Hence on both the counts i.e. on the application of the judgment of Division Bench of this Court in Nirav Shah's case (supra) as also having regard to Section 468 of the CrPC, the Applicant must succeed. The above Criminal Application is accordingly allowed and made absolute in terms of prayer clause (a). The above Criminal Application is accordingly disposed of.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav

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